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ARIZONA ATTORNEY GENERAL

March 23, 1954
Letter Opinion
No. 54-72-L

Samuel Wick, M. D.
Director
Arizona State Hospital
Phoenix, Arizona

Re: Responsibility for burial
of indigent patients.

Dear Dr. Wick:

In response to your inquiry of March 10, 1954, concerning whether individual counties should assume the responsibility for the burial of indigent patients, the Arizona statutes are not explicit concerning this subject.

One of the duties of the county board of supervisors, as set forth in Section 17-309, subsection 28, A.C.A. 1939, as amended, is as follows:

"17-309. Powers of board.--(a) The board of supervisors, under such limitations and restrictions as are prescribed by law, may:

* * * * *

28. Bury deceased indigents and mark their graves with a stone, giving the name, age, and date of death."

It is apparent from this Code section that any deceased indigent who passed away within the county may be buried at county expense. However, it is questionable that said board of supervisors would extend this permissive power to include those indigents who have died within and under the care of a state financed institution, such as the Arizona State Hospital. (It might be well to point out here that the State Welfare Board is required to provide a certain portion of the burial expense of old age pensioners and needy blind when these people have been receiving aid.) The Arizona Supreme Court has stated that the act of the Legislature making it the duty of the State Welfare Board to provide for the burial expenses of these two classes takes them out of the general provisions of the law with reference to the burial of indigents, and emphasizes an intention to leave the expenses of the burial of other indigents to the county

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board of supervisors. MARICOPA COUNTY v. STATE, 51 Ariz. 372, 77 P. 2d 212.

However, under the statutory procedure for commitment to the State Hospital we find the following provisions in Section 8-309, A.C.A. 1939, as amended:

"8-309. Commitment to hospital--Charges of confinement.--The board of supervisors of the county shall cause such person to be conveyed to the state hospital and shall provide for the safe confinement and care of such person until placed therein, and the costs and charge therefor shall be a county charge."

This statute would indicate that the only required county charge for an indigent person committed to the State Hospital is that incurred in the confinement and care of such person until he is delivered to the State Hospital.

The Public Health Code establishes an anatomy board and creates the duty to notify said Board of the death of indigents to be buried at public expense. Section 68-318, A.C.A. 1939, as amended, states as follows:

"68-318. Duty to notify and deliver.--It shall be the duty of every public officer, agent and servant of the state, and of every county, city and town, and every public institution supported in whole or in part at public expense, having in his or its possession the dead human body of any person for burial at public expense, to notify the board within twenty-four (24) hours after receipt thereof, and, upon instruction from the board, to deliver such body without fee or reward to the institution or person designated by the board."

The only other statute relating to the question in the instant case concerns the persons who are obligated to bury the dead, and it is Section 43-5202, A.C.A. 1939, which follows:

"43-5202. Person obligated to bury--
Failure--Custody of body.--If a deceased person was married, the duty of burial devolves upon the surviving spouse; if the deceased was not married but left any kindred,

the duty devolves upon the persons in the same degree, nearest of kin to the deceased, being of adult age, and within the state, and possessed of sufficient means to defray the necessary expenses; otherwise, the duty devolves upon the coroner conducting an inquest upon the body of the deceased, if any such inquest is held; if there is none, then upon the person charged with the support of the poor in the locality in which the death occurs. If the person, upon whom the duty of burial is cast omits to make such burial within a reasonable time, the duty devolves upon the person next specified; and if all omit to act, it devolves upon the tenant; or if there is no tenant, upon the owner of the premises or master; or if there is no master, upon the owner of the vessel in which the death occurs or the body is found.

Every person upon whom such duty is imposed who omits to perform that duty within a reasonable time, is guilty of a misdemeanor; and in addition to the punishment prescribed therefor, is liable to pay to the person performing the duty in his stead, treble the expenses incurred by the latter in making the burial, to be recovered in a civil action."

With respect to the above quoted statute the Arizona Supreme Court has said that no financial liability is created thereby, as this Code Section merely points out upon whom the duty of burial devolves in various circumstances and is more in the nature of a health regulation than an imposition of a financial responsibility. See *GRIFFEN v. COLE*, 60 Ariz. 83, 131 P. 2d 989.

At common law a poor person of no estate who dies, and there being no other person to perform such function, it is the duty of him under whose roof the body lies to carry it, decently covered, to the place of burial; 15 Am. Jur., Dead Bodies, section 7, page 833.

Since there is no specific statutory duty imposed upon the county of origin of the patient to bury the indigent dead of a state institution, it would seem in the light of the above citations that the only method of compelling the county to take over this responsibility would be the legislative enactment of such a requirement.

Very truly yours,

JOHN R. ELLIOTT
Assistant to The
Attorney General

JRE:LR